

REMARKS

Applicants have carefully reviewed the Office Action dated November 25, 2003. Claims 1-35 are pending in the present application and are subject to a restriction requirement under 35 U.S.C. §121. In response, Applicants respectfully traverse the restriction requirement, as discussed in detail below. In the event the Examiner maintains the restriction requirement, Applicants provisionally elect Invention II, claims 12-16 and 22-35, for prosecution on the merits.

Applicants respectfully submit that the restriction requirement is improper, in whole or in part, for the reasons set forth herein and, therefore, request withdrawal of the restriction requirement.

The Manual of Patent Examining Procedure (M.P.E.P.) recites the requirements for a restriction requirement. In particular, the M.P.E.P. states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 – Section 806.05(i)); *and*

(B) There must be serious burden on the examiner if restriction is required (see MPEP Section 803.02, Section 806.04(a) – Section 806.04(i), Section 808.01, and Section 808.02).

(M.P.E.P. Section 803 (emphasis added)). These two separate criteria must be satisfied to support a proper restriction requirement.

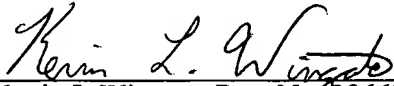
Moreover, M.P.E.P. Section 811 provides that “Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.” An action on the merits was mailed on June 11, 2003, covering claims 1-35, which includes all claims subject to the present restriction. A response to all rejections was provided to the Office Action. In the response to the Office Action, only claims 15, 16, and 35 were amended and the amendments were to correct typographical errors. Specifically, the word "and" was added to claim 15 before the last claim element, a semi-colon was added to the end of the first element of claim 16, and the word "to" was added between "function" and "disconnect" in line 4 of claim 35. These amendments in no way changed the scope of the claims. The applicants respectfully request that the Examiner retract the restriction because the burden on the Examiner is far from serious. Specifically, the claims of the application were fully searched in the first Office

Action and the differences to the original claims and the minor amendments to a few of the claims in the response to the first Office Action would not mandate a search that would cause a "serious" burden because the prior art from the prior search would still apply. Furthermore, a reclassification of the classification system to split a class as appears to have been done in this situation should not result in a restriction. In light of the slight burden on the examiner to perform and update search on the non-elected claims, the applicant respectfully requests a withdrawal of the restriction requirement.

Furthermore, as previously indicated, a response was provided to an action on the merits that was mailed on June 11, 2003, covering claims 1-35. In the response to the Office Action, the rejections made by the Examiner were traversed and only claims 15, 16, and 35 were amended to correct typographical errors. The Examiner did not address the response in the latest Office Action. Instead of addressing the response, the Examiner issued the restriction requirement. M.P.E.P. Section 707.07(f) requires that when an applicant traverses any rejection, the Examiner should "make proper reference thereto in his or her action on the amendment. Here, no reference by the Examiner has been made to the response filed with the PTO. Additionally, M.P.E.P. section 707.07(e) requires that every point in the prior action of an Examiner that is still applicable must be repeated or referred to, to prevent the implied waiver of the requirement. In the instant application, the Examiner has not repeated or referred to any point in the previous office action. Therefore, it is respectfully submitted that the Examiner has waived the previous claim rejections. Therefore, it is respectfully requested that the restriction requirement be withdrawn and that the Examiner pass this application to issuance.

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



Kevin L. Wingate, Reg. No. 38662
LEYDIG, VOIT & MAYER, LTD.
6815 Weaver Road, Suite 300
Rockford, Illinois 61114-8018
(815) 963-7661 (telephone)
(815) 963-7664 (facsimile)

Date: December 12, 2003